

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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In the Matter of

Federal Communications Commission
Office of Secretary

**Amendment of the Commission's
Rules to Permit Flexible
Service Offerings in the
Commercial Mobile Radio Services**

WT Docket No. 96-6

To: The Commission

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REPLY COMMENTS OF THE RURAL TELECOMMUNICATIONS GROUP

The Rural Telecommunications Group ("RTG"),¹ by its attorneys, hereby respectfully submits these Reply Comments in response to Comments filed pursuant to the *First Report and Order and Further Notice of Proposed Rulemaking* ("FNPRM"), in WT Docket No. 96-6. RTG supports the numerous commenters who favor regulating all services provided by commercial mobile radio service ("CMRS") licensees -- including fixed services -- as CMRS under § 332 of the Communications Act of 1934, as amended ("the Act"), unless and until such CMRS service replaces land line service for a substantial portion of the public and such CMRS licensees have market power in the provision of such services.² RTG joins these

¹ RTG is a group of rural telephone companies who have joined together to advance their interests in providing innovative wireless telecommunications technologies to rural America. RTG's members include CMRS licensees who are investing in the latest mobile technologies so that their customers can enjoy as wide a selection of telecommunications options as their urban counterparts.

² See, e.g., Comments of Sprint Spectrum L.P. d/b/a Sprint PCS ("Sprint"); Comments of AirTouch Communications, Inc. ("AirTouch") at 3-4; Comments of the Cellular Telecommunications Industry Association ("CTIA"); Comments of the Personal Communications Industry Association ("PCIA"); Comments of the Rural Cellular Association, ("RCA"); Comments of AT&T Corp. ("AT&T"); Comments of Nextel

commenters in opposing the rebuttable presumption plan which the Federal Communications Commission ("FCC" or "Commission") proposed in the *FNPRM*.

COMMENTS

RTG agrees with Sprint that "[e]ven the establishment of a favorable presumption represents unnecessary and inefficient regulation."³ This *ad hoc* regulatory proposal will stifle competition, delay the advent of new services, subject wireless providers to needless expense, and deny the public the benefit of technological innovation.⁴ Incumbent Local Exchange Carriers ("ILECs") and other competitors will use the Commission's rebuttable presumption proposal as a tool to delay the introduction of new CMRS services.⁵ As AirTouch correctly observes:

[E]ach new fixed service contemplated by CMRS licensees could well result in a detailed, expensive, and protracted review process which will inhibit rather than encourage the very competition, innovation, and experimentation which the Commission seeks to promote⁶

Such expense and delay will be especially burdensome to rural wireless providers who are trying to introduce new wireless services, such as wireless internet access and

Communications ("Nextel"); Comments of CommNet Cellular Inc. ("CommNet").

³ Sprint at 2. *Accord*, AirTouch at 3-4; AT&T at 4-5; Sprint at 3-4.

⁴ *See, e.g.*, AirTouch at 4-7; AT&T at 4-5.

⁵ AirTouch at 6-7 (tool to forestall competition); AT&T at 5. Sprint correctly notes that CMRS carriers initiating fixed service begin with zero market share and face competition from incumbent LECs, competitive local exchange carriers ("CLECs") and other CMRS licensees. Sprint at 4.

⁶ AirTouch at 3.

telemedicine to rural schools and hospitals to rural populations. Rural wireless telecommunications providers should not be burdened with the expense of *defending* every new fixed service that they initiate.⁷

As CTIA correctly notes, the Commission's *ad hoc* approach will also result in CMRS carriers avoiding innovative service offerings which they fear could subject them to Title II regulations.⁸ Providers may design systems to avoid regulation rather than to foster efficiency or respond to market demand. In addition, manufactures could try to design mobility into an otherwise fixed system merely for the purpose of attempting to avoid regulation.⁹ RTG opposes any unnecessary regulation of CMRS, and certainly regulation that distorts market forces. Instead, the Commission should adopt a uniform regulatory approach and regulate all services offered by CMRS licensees as CMRS.

In opposing the Commission's proposed rebuttable presumption that all services provided by CMRS licensees be regulated as CMRS, NTCA argues that there should be

⁷ C.f., Comments of the National Telephone Cooperative Association ("NTCA") at 4. NTCA opposes the rebuttable presumption proposal because it "will require rural [wireline] companies to expend resources on the administrative costs and research necessary to *challenge* the presumption." *Id.* (emphasis added). Under a uniform regulatory approach, this concern would be irrelevant because there would be no need for any party to spend money challenging a presumption. Nonetheless, RTG notes that, under the FCC's proposal, a wireline company or any challenger of the presumption faces less burden and expense because it stands to gain from delay. Moreover, because LECs are in the best position to determine loss of market share of their own service, there would not be substantial research costs for challenging a presumption should the Commission adopt the proposal. LECs know when they are losing customers.

⁸ CTIA at 14.

⁹ RTG noted in its Comments that systems provided over CMRS technologies are inherently mobile in nature. The fact that a mobile phone sits stationary on a desk does not decrease its potential for mobile operations.

regulatory parity between all providers of fixed services.¹⁰ While RTG wholeheartedly supports the concept of regulatory parity, it must point out a fundamental flaw in NTCA's logic: CMRS providers and LECs are not similarly situated fixed service competitors.¹¹ As Sprint correctly states:

Given the nascent state of wireless local loop services, all commercial service offerings by CMRS providers, both fixed and mobile, should be regulated as CMRS under the regulatory forbearance structure the Commission has properly established for those services. CMRS providers do not possess market power with respect to fixed services, and as such, do not pose a competitive threat that would justify increased regulatory oversight....Unless and until CMRS licensees demonstrate market power in the fixed wireless loop market, the Commission should take no further regulatory action.¹²

CMRS providers do not control bottleneck facilities, cannot impose barriers to entry or engage in other anticompetitive activity.¹³

For the above reasons, the Commission should adopt a uniform approach and regulate all services offered by CMRS providers as CMRS unless and until such time as those providers exercise market power and a state petitions the Commission that the fixed wireless service constitutes a substitute for landline service in a substantial portion of the state. NTCA argues that such an approach will be "administratively burdensome and too costly."¹⁴

¹⁰ NTCA at 4 ("[R]ural companies should not have to engage in costly proceedings to ensure regulatory parity, a principle that should exist unequivocally.").

¹¹ Contrary to NTCA's assertions, rural LECs like CMRS providers, are exempt from most of the interconnection obligations of § 251(c) of the Act under § 251(f) of the Act.

¹² Sprint at 2.

¹³ See, *id.*

¹⁴ NTCA at 4.

Contrary to NTCA's assertion, such an approach is not overly burdensome for LECs since monopoly LECs know when they lose market share and will therefore know when they need to petition for state relief. Rather than attempting to drag CMRS providers down into the regulatory mire of Title II regulation, monopoly LECs should persuade the FCC and the states to lift them out of the mire once effective competition exists. RTG expects that the LECs will prefer this outcome and will work to make it a reality long before fixed CMRS becomes a substitute to a substantial percentage of the population.

CONCLUSION

Rather than creating a system of uncertainty, subject to abuse and delay and contrary to the goals of the Act, the Commission should adopt all proposals set forth herein and regulate all services offered by CMRS licensees as CMRS service.

Respectfully submitted,

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Certificate of Service

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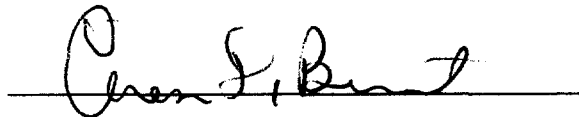
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